

April 6, 2001

Request for Waiver of Requirement of Rule
(Chapter 204, Section VIII (B) to Expand
The Local Calling Area of Bell Atlantic-Maine's
934 Exchange

ORDER

I. SUMMARY

In this Order we grant one request and deny another request for waivers of the requirements for adding an exchange to a basic service calling area. We direct Verizon New England Inc. d/b/a Verizon Maine (Verizon) to file an implementation plan with a timetable within forty-five days of this Order to expand the basic service calling area (BSCA) of the Old Orchard Beach exchange to include the Portland exchange. We deny a similar request to add the Scarborough exchange.

II. BACKGROUND

On February 8, 2000, the Commission received a petition from David G. Lemoine and almost 1,700 other petitioners requesting a waiver from the requirements of Section VI (B)(1) of the Commission's Basic Service Calling Area Rule (Chapter 204). The number of petitioners represents approximately 25% of the customers in that exchange. Chapter 204's waiver provision requires that the lesser of 30% or 1,000 customers sign the petition. The petitioners requested that the Portland and Scarborough exchanges served by Verizon (formerly Bell Atlantic-Maine) be added to the Premium calling area of the Old Orchard Beach (OOB) exchange, also served by Verizon. Currently, the BSCA for the OOB exchange includes the exchanges of Old Orchard Beach and Biddeford – more than 31,000 lines. In addition, OOB has an optional calling plan that provides flat-rated, one-way calling to the Scarborough exchange – more than 11,000 additional lines.¹

The BSCA Rule governs basic service calling area issues. It provides a mechanism for expanding an exchange's calling area pursuant to calling volume measurements made every five years. Pursuant to Part III (A) of the Rule, an exchange will be added to another exchange's calling area if 50% of the exchange's residential customers make four or more toll calls to the target exchange in the test month. If these requirements are not met, customers may request, in writing, that their telephone company try to accommodate their

¹ Expanded Community Calling Service – One hour block of time to Scarborough exchange, \$3.00 per month, \$.05 per minute for overtime. Expanded Community Calling Service Plus – Unlimited calling to Scarborough, \$6.00 per month.

request. If the telephone company cannot meet the request, the customers may file a petition with the Commission.

Petitioners claim that the calling area should be expanded because OOB telephone customers have developed increasingly extensive relationships with the Portland area communities and employment patterns show that Old Orchard Beach is part of the Greater Portland Labor Market.

On May 8, 2000, Verizon submitted comments objecting to the expansion of the OOB calling area because the percentages of customers making four or more calls to Portland or Scarborough did not meet the threshold requirements of the BSCA Rule. Verizon argued that the petitioners' desire for expanded calling into a larger metropolitan area is not unique to the OOB exchange. Other "hotspots" in Maine are similarly situated and granting this petition will require investigation of the other exchanges in Maine that do not have the desired basic service calling area. Verizon encouraged the Commission to amend the BSCA Rule if it wants to change calling area policies rather than making *ad hoc* alterations outside the operation of the BSCA Rule.

On September 8, 2000, the Presiding Officer for this docket issued a Recommended Decision which recommended denial of the petition because it did not meet the requirements of the BSCA rule and for other reasons. During the latest round of measurements (which took place in 1999), the calling volumes from Verizon's OOB exchange to Portland and Scarborough did not qualify for BSCA expansion. Proprietary information submitted by Verizon indicates that call volumes from OOB to Portland and Scarborough are substantially below the requirements of the Rule (the percentage of customers making four or more toll calls to Scarborough was approximately one-third of the percentage to Portland). The Verizon information also indicated that very few OOB exchange customers subscribed to the existing optional calling plans from OOB to the Scarborough exchange. Proprietary cost information submitted by Verizon indicated a substantial revenue loss if Portland or Scarborough were added to the OOB premium calling area. Finally, the complainants already have access to more than 42,000 lines in the OOB, Biddeford and Scarborough exchanges. Their calling area is larger than many other calling areas in the state.

The Recommended Decision permitted parties and others to file comments or exceptions. Prior to the Recommended Decision, on September 6, 2000, the Office of the Public Advocate (OPA) had submitted comments stating that the petition had merit and should not be denied. The OPA suggested that the call volume study performed by Verizon might not be reliable due to a number of factors: skewed results due to seasonal residents; changes in the telecommunications market since the adoption of the BSCA rule; and the number of Verizon customers who have switched to other instate toll carriers. The OPA further stated that OOB residents rely heavily on the Portland area for jobs, medical services, and many other commercial transactions: "Portland is the

major community of interest for Old Orchard Beach.” On September 20, 2000, the OPA filed exceptions to the recommended decision reiterating its previous comments and requesting that the Commission conduct a public hearing before making a decision. The OPA’s comments or exceptions did not include proposed rates or rate design.

On September 18, 2000, David Lemoine, lead petitioner, filed exceptions to the recommended decision, stating that the waiver request should be granted because Portland is a substantial community of interest for OOB residents. On September 20, 2001, Verizon submitted comments supporting the recommendation to dismiss the petition.

The Commission deliberated the recommended decision on October 2, 2000 and declined to make a final decision. The Commission directed staff to obtain additional cost and revenue impact information from Verizon. The Commission also noted that the number of signatures on the petitions indicated a high level of “community sentiment” and further directed staff to schedule a public witness hearing in Old Orchard Beach.

On November 1, 2000, the Commission conducted a public witness hearing in the Old Orchard Beach Town Hall. While an actual count was not made, attendance was estimated at more than 250. Twenty-seven residents gave sworn testimony and three gave unsworn testimony. Most of the comments were similar to previous statements by the petitioners and the OPA. OOB is a seasonal community with a substantial level of retired permanent residents who call Portland for services. Many of the businesses in OOB employ workers from Portland, causing increased toll calling for business purposes. Many of the residents of OOB work in Portland and have to make toll calls to call home. A school board member stated that the school makes hundreds of calls per month to Portland, primarily contacting parents who work in Portland regarding sick children. The consensus of the speakers at the public witness hearing was that Portland is the economic and social community of interest for Old Orchard Beach.

Pursuant to Staff requests, on March 22, 2001, Verizon provided additional calling pattern and cost information. That information indicates that a substantial minority of OOB exchange customers makes a large number of calls to Portland. It also indicates that a slight majority makes no calls to Portland. In short, it shows a wide disparity of calling patterns by customers. It is not clear if such disparity exists in other exchanges throughout the state that arguably have a community of interest with another exchange that is not presently included in the first exchange’s BSCA.

IV. DECISION

We believe that the existing standard for establishing additional calling areas may not reflect present realities concerning what constitutes a true community of interest, at least for OOB and Portland. We have commenced an inquiry that will consider possible changes to the BSCA rule.² Market forces and other options may make analysis difficult. The proliferation of other methods for making calls, particularly cellular wireless calls, makes the underlying assumptions of the rule regarding a community of interest problematic. Data provided solely for ILEC (incumbent local exchange company) calling patterns may not provide as reliable an indication of a community of interest as it did when Chapter 204 was implemented in 1994. As a result, we believe flexibility is required in this situation.

We conclude that the information presented to us by the petitioners and at the public witness hearing demonstrates a sufficient community of interest between Old Orchard Beach and Portland to justify a waiver of our rule so as to expand OOB's BSCA, or flat-rated, two-way local calling area to include the Portland exchange. This will allow customers in OOB to call and be called from the Portland exchange without toll changes.

The more difficult question is who should pay for the revenue lost by Verizon as a result of expanding the calling area. Since we are in effect creating an exception to our rule for OOB, we think it appropriate for the OOB Premium service customers who will benefit from this exception to absorb a meaningful amount of the costs, rather than spreading them equally among all of Verizon's customers throughout the state. Accordingly, those OOB customers who choose Premium calling service that will now include Portland will pay a \$5 surcharge per month over their basic monthly rate in effect today. We also believe that basic rates for customers who do not choose Premium calling to Portland should not change (the default will be Economy calling service – calling to OOB and the Biddeford exchange).³ The effect of this decision is that the Economy rate for residential customers will remain \$16.06 per month and the Premium rate will be \$21.06. The Economy rate for business customers will remain \$35.47, and the Premium rate will be \$40.47 per month. Customers choosing Economy calling service will pay \$0.25 per call to call the Portland exchange rather than present toll rates.

Verizon will track the revenue impact of our decision for two years from the date the change takes effect. We require two years rather than the normal one

² Inquiry into revisions to the Basic Service Calling Area Rule, Chapter 204, Docket No. 2000-752.

³ Migrating the OOB exchange from its current rate group E rate level to rate group F, as required by Verizon's tariffs, would result in a slight decrease for Economy calling service customers because OOB's current rate is the Premium rate for rate group E. Exchanges where the Premium and Economy areas are identical are classified for rate purposes as Premium.

year under the rule. We are concerned that take rates for Premium and Economy services may be influenced by the level of the surcharge and that decreasing toll and access rates will lessen the impact of the expansion. For any recovery of toll loss during the tracking account period, Verizon should calculate the tracking account amount using baseline usage multiplied by toll rates that are actually in effect over the tracking account period, not the rates in effect in 1999 or 2000. For ongoing toll revenue loss, Verizon should use rates that are likely to be in effect following the tracking period. Verizon should report the status of the OOB account after one year.

We therefore approve, in part, the request for waiver of the BSCA rule and direct Verizon New England Inc. d/b/a Verizon Maine to file an implementation plan with a timetable within forty-five days of this Order to expand the basic service calling area of the Old Orchard Beach exchange to include the Portland exchange. The request to include the Scarborough exchange is denied, as there exists a flat-rated calling plan with very few subscribers, and present calling volumes to Scarborough are substantially less than those to Portland.

Dated at Augusta, Maine, this 6th day of April 2001.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR:

Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.